



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JUNE 06, 2023

IN THE MATTER OF:

Appeal Board No. 628959 A

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board Nos. 628958 A and 628959 A, the Commissioner of Labor applied to the Appeal Board pursuant to Labor Law § 534 for a reopening and

reconsideration of the decisions of the Appeal Board, filed March 7, 2023, which affirmed the decisions of the Administrative Law Judge, filed December 2, 2022, and sustained the initial determination charging the claimant with an overpayment of \$359.00 in benefits recoverable pursuant to Labor Law § 597

(4), as modified to hold the overpayment nonrecoverable; and overruled the initial determination reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$100.00 on the basis that the claimant made a willful misrepresentation to obtain benefits.

Upon consideration of the application to reopen, after due notice to the parties, the Board has decided to reopen and reconsider its decisions.

Our review of the record reveals that the case should be remanded to hold a hearing. In the application to reopen, the Commissioner of Labor contends that the claimant was advised during the certification process that he was also certifying that he had complied with the work search requirements during the week for which he was certifying. The Board has determined to afford the Commissioner of Labor to present testimony and

evidence in this regard. Specifically, the claimant should be confronted with the Tel-Service Script that had been accepted into evidence as Hearing Exhibit 3. The claimant should be asked if he heard the language which appears in the

"Post Authentication" section when he certified for benefits. The Commissioner of Labor should present further testimony and evidence regarding the "Post Authentication" section of the Tel-Service Script, as well as any other portions of the certification process where the claimant may have been informed that he was certifying that he had complied with work search requirements.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Appeal Board, filed March 7, 2023 be, and the same hereby are, rescinded; and it is further

ORDERED, that the decisions of the Administrative Law Judge, filed December 2, 2022, be, and the same hereby are, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues of recoverable overpayment of benefits and willful misrepresentation of benefits, imposing a forfeit penalty and civil penalty, ONLY, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new combined decision, on the issues of recoverable overpayment of benefits and willful misrepresentation of benefits, imposing a forfeit penalty and civil penalty, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER